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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/509,032	03/21/2000	Tord Inghardt	3525-71	7761

23117 7590 09/24/2003  
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EXAMINER
SAEED, KAMAL A

ART UNIT	PAPER NUMBER
1626	

DATE MAILED: 09/24/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/509,032	INGHARDT ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kamal A Saeed	1626	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) Responsive to communication(s) filed on 05 June 2003.
- 2a) This action is **FINAL**.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) \_\_\_\_\_ is/are rejected.
- 7) Claim(s) 1-24 is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
 If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \*    c) None of:
  1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
  - a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

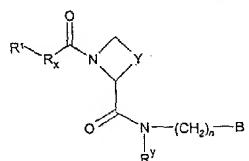
- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: \_\_\_\_\_.

## DETAILED ACTION

Claims 1 – 24 are pending in this application.

### *Status of the Claims*

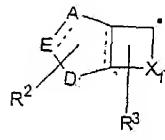
The scope of the elected invention, described in the Office Action mailed on March 10, has been modified as follows:



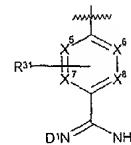
Compounds of formula I,

wherein:

**Y** is independently represent CH<sub>2</sub>, (CH<sub>2</sub>)<sub>2</sub> or CH=CH; **R<sub>x</sub>** is structural fragment

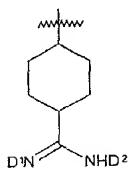


; **A**, **D** and **E** each independently represent CH or CH<sub>2</sub>; **X<sub>1</sub>** represents C<sub>2-3</sub>



alkylene; **R<sub>y</sub>** represents H or C<sub>1-4</sub> alkyl; **B** is structural fragment

or



; **X<sup>5</sup>**, **X<sup>6</sup>**, **X<sup>7</sup>** and **X<sup>8</sup>** each independently represent CH; **R<sup>1a</sup>**, **R<sup>1b</sup>**, **R<sup>1c</sup>** and **R<sup>1d</sup>** are as

defined; **R<sup>1-30</sup>** are as defined except the none of them represent a six-membered heterocyclic group with more than one heteroatom; **D<sup>1</sup>** and **D<sup>2</sup>** are as claimed;

As a result of the election and the corresponding compounds identified supra, the remaining subject matter of claims 1-24 as stated previously (in Office Actions mailed March 10, 2003) are withdrawn from further consideration pursuant to 37 CFR 1.142 (b) as being drawn to non-elected inventions.

***Request for reconsideration of Restriction Requirement***

Applicant's request for reconsideration of the restriction requirement has been considered but is not found persuasive. Applicants argue that the examiner recasting of the claims to the scope of the elected invention improperly limits the scope of Applicants claims. However, the scope of the elected invention does not improperly limit the scope of Applicants claims. The compounds, which are withdrawn from consideration as being non elected subject matter, differ materially in structure and composition from the compounds of the elected invention. The withdrawn compounds contain varying functional groups which differ from those of the elected invention such tetrazine, triazine, diazine, morpholine, thiazine, oxazole, thiazole, triazole, group etc. This recognized chemical diversity of the functional groups can be seen by various classification of these functional groups in the US classification system i.e. class 544 subclass 106+ (morpholine), class 544 subclass 3+ (thiazine), class 548 subclass 255+ (triazoles) seven-membered ring with one Nitrogen as hetero atom, class 540 subclass 450+ etc. Therefore, the compounds, which are withdrawn from consideration as being for non elected subject matter, differ materially in structure and composition and have been restricted properly as a reference, which anticipated, but the elected subject matter would not even render obvious the non-elected subject matter.

**Applicant's claim involves more than one independent or distinct invention .** Under 35 U.S.C. 121, the claims may be restricted and the examination limited to the restricted invention. Accordingly, restriction as has been presented in this application is proper. The requirement to restrict is repeated and made Final.

***Objections***

Claims 1-24 are objected to for containing non-elected subject matter. Claims 1-24 presented solely to the elected invention as identified *supra*, would appear allowable over the prior art of record.

Therefore **THIS ACTION IS MADE FINAL .** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136 (a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

***Telephone Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kamal Saeed whose telephone number is (703) 308-4592. The examiner can normally be reached on Monday-Friday from 8:00 AM – 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Joseph K. McKane, can be reached at (703) 308 4537. The unofficial fax phone for this group are (703) 308-4556 or 305-3592.

When filing a FAX in Technology Center 1600, please indicate the Header (upper right) "Official" for papers that are to be entered into the file, and "Unofficial" for draft documents and other communications with the PTO that are not for entry into the file of the application. This will expedite processing of your papers.

Communication via Internet e-mail regarding this application, other than those under 35 U.S.C. 132 or which otherwise require a signature, may be used by applicant and should be addressed to [joseph.mckane@uspto.gov]. All Internet e-mail communications will be made of record in the application file. PTO employees will not communicate with applicant via Internet e-mail where sensitive data will be exchanged or where there exists a possibility that sensitive data could be identified unless there is of record an express waiver of the confidentiality requirements under 35 U.S.C. 122 by the applicant. See the Interim Internet Usage Policy published by the Patent and Trademark Office Official Gazette on February 25, 1997 at 1195 OG 89.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist, whose telephone number is (703) 308-2286.

Kamal Saeed, Ph.D  
September 18, 2003

Joseph K. McKane  
Joseph K McKane,  
Supervisory Patent Examiner  
Art Unit 1626, Group 1626  
Technology Center 1